

M/035/0042
cc: Leslie



February 7, 2013

RECEIVED E-MAIL

FEB 22 2013

Div. of Oil, Gas & Mining

Via E-Mail and Regular Mail

M. Craig Hall
Oldcastle Materials, Inc.
900 Ashwood Parkway, Suite 700
Atlanta, GA 30338-4780

RE: Conditional Use Permits 09C08 (Beef Hollow) CMC Rock LLC

Dear Craig:

I am in receipt of your letter dated January 3, 2013 ("Letter"), and this letter is in response to your Letter. This letter is a confidential settlement communication within the scope of and subject to the protections of Utah Rule of Evidence 408 and/or its federal equivalent.

We still believe there is a basic misunderstanding between Herriman City ("City") and Staker & Parson Companies ("Staker"). Specifically, the City does not believe there is a development plan (as defined by the City and as contemplated in the condition identified below) to supplement. As stated in our previous letter, regardless of the misunderstanding, the City is willing to pursue a reasonable resolution. The following updates and summarizes what the City asserts constitutes the failure to satisfy the conditions listed below (the numbers correspond to the condition numbers identified in the conditional use permits letter granted to Staker's predecessor in interest dated May, 29, 2009, and restates the condition). I have also added some commentary that responds to your Letter that may be helpful to Staker and articulates the City's position.

Condition #4:

Condition: Submit a plan which shows the limits of disturbance for the entire property and the surface area for each phase that can be disturbed at one time.

Commentary: In your Letter with respect to condition #4, you state that the "parties are jointly working to produce as a supplement to the S&P existing development plan." As stated in our previous letter to you, the City does not consider the plan signed by Glenn Graham (the City planner at the time) as satisfying this condition. The requirement for a development plan has not

been satisfied, and there is no plan to supplement. However, as stated above, the City is willing to pursue a reasonable resolution that includes submission of a development plan that is acceptable to the City. Furthermore, it is difficult to call it a joint plan, since we have not had any discussion or input on the plan. Please provide a detail plan of how and when Staker plans to pursue submission of a development plan.

Condition #5:

Condition: A development plan to be implemented later must be submitted for review prior to sand and/or rock removal, and the operation shall be carried out in conformance with the approved plan.

Commentary: See my response to condition #4 above.

Condition #6:

Condition: The use shall be operated in a manner that eliminates unnecessary dust, noise, and odor (as illustrated by, but not limited to, covered trucks, hoppers, chutes, loading and unloading devices, and mixing operations, and maintaining the driveways and parking areas free of dust). This shall also include having a water truck permanently on site.

Commentary: As with all other conditions, including those not specifically addressed in this letter, this condition is also an ongoing obligation, and the City will continue to monitor compliance with this condition.

Condition #10:

Condition: Only sand and/or rock mined on the premises may be processed in any crushing plant located on the lot or premises.

Commentary: We renew our request for your assistance in identifying the owner of the offending off-site material.

Condition #12:

Condition: Obtain a state storm water discharge permit.

Commentary: As with all other conditions, including those not specifically addressed in this letter, this condition is also an ongoing obligation, and the City will continue to monitor compliance with this condition.

Condition #15:

Condition: Obtain any state permits required and provide a copy to the City.

Commentary: In your Letter you invite the City to "direct further inquiries to appropriate State officials." On January 28, 2013, at your invitation, City personnel met with Leslie Heppler of the Division of Oil, Gas & Mining. As a result of the meeting, it appears that on June 19, 2012,

Staker filed a Notice of Intent, but the state has not issued the required permit; and Staker is not in compliance with condition #15. In fact, according to a letter dated August 22, 2012, to Staker from the Division of Oil, Gas, and Mining, there are 46 deficiencies that must be cured before a "tentative approval" would be granted. Also the City was extremely surprised to discover Figure 10 that was attached to the Notice of Intent. It appears that Figure 10 is not consistent with the development plan Staker asserts satisfies conditions # 4 and #5, was not part of the conditional use application, and has never been reviewed by City officials. Please explain why Figure 10 is not consistent with the development plan Staker asserts satisfies conditions #4 and #5, why it was not part of the conditional use application, and why it has never been submitted to the City for review and discussion. Your prompt attention to this matter would be greatly appreciated.

Condition #16:

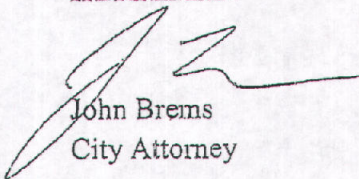
Condition: Work with City Engineer on removing material uniformly.

Commentary: As with all other conditions, including those not specifically addressed in this letter, this condition is also an ongoing obligation, and the City will continue to monitor compliance with this condition.

I also look forward to your prompt reply so that we can work towards a reasonable resolution to these issues.

Very truly yours,

HERRIMAN



John Brems
City Attorney

cc: Mayor Mills
Brett Wood
Gordon Haight